IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2009

Coram:

THE HONOURABLE Mr.JUSTICE R.SUDHAKAR

W.P.No.30071 of 2002

Tmt.Selvi ... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Department of Home,
Fort St. George,
Chennai – 600 009.

2. The Chairman,
Chennai Metro-Water Supply and
Sewerage Board, Chintadripet,
Chennai – 600 002,

3. The Commissioner,
Corporation of Chennai,
Park Town, Chennai – 600 003. ... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to pay the petitioner appropriate compensation for the death of the petitioner's son, Prakash alias Ganesh, on 16.04.1998.

For Petitioner : Mr.P.Anbarasan

For R-1 : Mr.L.S.Hasan Fizal,
Government Advocate

For R-2 : Mr.V.Manohar

For R-3 : Mr.V.Bharathidasan

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O R D E R
This Writ petition is filed praying to issue a writ of mandamus directing the respondents to pay the petitioner appropriate compensation for the death of the petitioner's son, Prakash alias Ganesh, on 16.04.1998.

2. The parents of the deceased Prakash alias Ganesh approached the High Court Legal Services Committee on the death of their son praying compensation. Initially, one Mr.S.S.Vasudevan was appointed as an advocate, directing him to provide legal assistance to the petitioner. Due to personal reasons, it appears that the counsel did not appear. Later, Mr.P.Anbarasan, learned counsel has entered appearance on behalf of the petitioner. First respondent is represented by the learned Government Advocate, the second respondent appears through the counsel Mr.V.Manohar and the third respondent is represented by counsel Mr.V.Bharathidasan.

3. The brief facts of the case are as follows:- Prakash alias Ganesh, a 4 = years old child was playing in front of the house. There was a sewage manhole. It appears that due to improper maintenance of the manhole by the Chennai Metro Water Supply and Sewerage Board, the cover of the manhole was crushed exposing the hole. The child fell into the said manhole and died. A case was registered under Section 174 of Cr.P.C. in Crime No.390 of 1998 on the file of H-5, New Washermanpet police station. The post-mortem was done at Stanley Hospital and the Doctor has given his opinion that the death was due to drowning and asphyxia. According to the petitioner, she has given a representation to the first respondent on 25.03.1999 and also to the local councillors on 18.09.1998. Since no compensation was given in spite of the representation of the petitioner, she filed the present writ petition seeking compensation for the proved negligence on the part of the respondents.

4. The respondents 1 and 3 have not filed counter-affidavit. But, the second respondent has filed a counter-affidavit. In paragraph No.6 of the counter, it is stated that based on the oral complaint received from the public on 17.04.1998, at about 9.30 a.m. the open manhole door at Chrian Nagar main road abutting Corporation Boy's Middle School compound wall, was inspected by the staff of the second respondent Sewerage Board. At the time of inspection, the residents of the street requested the second respondent's Sewerage Board workers to check about the missing 4 = year old boy. As requested by the public, the staff of the Sewerage Board searched the open manhole and found the body of the boy inside the open sewage manhole. According to the counter affidavit, R.C.C. manhole door was found intact on the previous day. The manhole was closer to the compound wall of Corporation Boy's Middle School, where private lorries and tempo owners parked their vehicles in night hours. The vehicles so parked have crushed the RCC cover of the manhole. It is also stated in the counter affidavit that on 16.04.1998, at night time, there was power cut and in view of the darkness, the boy could have fallen in the open manhole. The fact that there was a power cut is confirmed by the Tamil Daily published on 17.04.1998.

5. From the statements contained in the counter-affidavit and also from the plea of the petitioner, it is clear that on 16.04.1998, the boy had fallen into the open sewage manhole, which apparently was open as the RCC cover due to improper laying was crushed to vehicle movement. At the instance of residents, the staff of the second respondent were able to identify the dead body inside the sewage line through the manhole opening. The Doctor has opined that the death was due to drowning and asphyxia. A First Information Report was registered immediately after the incident.

6. It is not in dispute that the death of the boy was due to falling into the open sewage manhole, maintained by the second respondent. If the R.C.C. cover had been properly maintained, the unfortunate incident would not have happened resulting in the death of the child. It is not disputed that the maintenance of the manhole over the sewer line is that of the second respondent. It is accepted by the second respondent that the manhole cover could have been crushed by the weight of the vehicles parked on the road. From this, it is clear that the death of the 4 = year old boy on 16.04.1998 was due to improper maintenance of the RCC manhole cover which is under the control of the second respondent Sewerage Board. There is no and there can be no serious dispute by the second respondent about the manner in which the death of the boy occurred. The main plea that has been taken in paragraph No.7 of the counter affidavit is that, no demand has been made except the

representation sent to the local body and the Government.

7. Learned counsel for the petitioner placed reliance the decision of the Hon'ble Apex Court reported in (1992) 2 Supreme Court Cases 223 (Kumari Vs. State of Tamil Nadu and others), wherein in paragraph No.3, it has been held as follows:-

"3. In the facts and circumstances of this case, we set aside the High Court judgment and direct that respondent 1, the State of Tamil Nadu shall pay to the appellant a sum of Rs.50,000/- (Rupees fifty thousand) with interest at 12 per cent per annum from January 1, 1990 till the date of payment. The amount shall be paid within six weeks from today. It will be open to the State of Tamil Nadu to take appropriate proceedings to claim the said amount or any part thereof from any of the respondents or any other authority which might be responsible for keeping the sewerage tank open. The claim, if made, will be decided in accordance with law. The appeal is allowed in the above terms. There will be no order as to costs."

8. Learned counsel for the petitioner also relied upon the decision of this Court reported in 2000 (III) CTC 24 (D.Matsa Gandhi Vs. Tamil Nadu Slum Clearance Board, rep. By its Chariman, Madras-5), wherein, (P.Sathasivam,J.) as he then was, held in that case, that the Corporation is liable to compensate for acts of negligence. In that case, damages were claimed on the death of a girl aged about 17 years, who fell into the well and died. The Court held that the well was improperly maintained by the Slum clearance board. Relying upon the decisions reported in 2000 (4) SCC 553 (Nath Bros., Exaim International Ltd., Vs. Best Roadways Ltd.,), the learned Judge of this Court held that if negligence is not disputed, the power under Article 226 can be exercised to grant the relief. In the above said case, the decision of the Hon'ble Supreme Court reported in 2000 (3) S.C.C. 754 (Parvati Devi and others Vs. Commissioner of Police, Delhi and others) was also relied upon to grant the compensation.

9. The first Bench of Delhi High Court in Delhi Jal Board vs. - Raj Kumar reported in AIR 2006 DELHI 75, dealt with the similar case claiming compensation consequent to the death of a person driving a scooter while crossing a manhole improperly maintained. In that case, the Delhi High Court held in paragraph 39 that there is a duty of the State to function as a Welfare State and look after the welfare of all citizens. It also relied upon the case of Rylands v. Fletcher (1868 LR 3 Ex 330) and applied the principle of strict liability on the department which has to maintain the manhole. The relevant portion in paragraphs 18, 19, 20 and 21 reads as follows:-

"18. Rylands v. Fletcher in fact created a new legal principle (the principle of strict liability in the case of hazardous activities), though professing to be based on analogies drawn from existing law. The judgment is noteworthy because it is an outstanding example of a creative generalization. As Wigmore writes, this epoch making judgment owes much of its strength to 'the broad scope of the principle announced, the strength of conviction of its expounder, and the clarity of his exposition'.

19. Strict liability focuses on the nature of the defendants' activity rather than, as in negligence, the way in which it is carried on (vide 'Torts' by Michael Jones, 4th Edn. P.247). There are many activities which are so hazardous that they may constitute a danger to the person or property of another. The principle of strict liability states that the undertakers of these activities have to compensate for the damage caused by them irrespective of any fault on their part. As Fleming says "permission to conduct such activity is in effect made conditional on its absorbing the cost of the accidents it causes, as an appropriate item of its overheads (see Fleming on 'Torts', 6th Edn. p. 302).

20. Thus in cases where the principle of strict liability applies, the defendant has to pay damages for injury caused to the plaintiff, even though the defendant may not have been at any fault.

21. The basis of the doctrine of strict liability is two fold (1) The people who engage in particularly hazardous activities should bear the burden of the risk of damage that their activities generate, (2) it operates as a loss distribution mechanism, the person who does such hazardous activity (usually a corporation) being in the best position to spread the loss via insurance and higher prices for its products (vide 'Torts' by Michael Jones 4th Edn. p. 267)."

The First Division Bench of Delhi High Court upheld the compensation granted by the learned single Judge.

10. In view of the undisputed facts of the present case, where the child died after falling into the sewage line left open due to the improper maintenance of the manhole by the second respondent, the second respondent is liable to compensate the petitioner for the death of the child.

11. In so far as compensation is concerned, the provisions of the Motor Vehicles Act can be referred to so as to determine just compensation. In the following cases, the compensation on the death of the minor child has been granted as follows:-

(i) Manju Devi and another Musafir Paswan and another 2005 ACJ 99 = 2005(1) TAC 609(SC), wherein the Apex Court granted compensation in a sum of Rs.2,25,000/- with interest from the date of filing the claim for the death of 13 years boy in the accident which happened in the year 1998.

(ii) New India Assurance Co. Ltd. - vs. - Satender reported in A.I.R. 2007 Supreme Court 324, wherein the Apex Court granted compensation in a sum of Rs.1,75,000/- with interest from the date of filling the claim for the death of 12 years boy in an accident which happened in the year 1999.

In this case, the fatal accident happened on 16.4.1998. In that accident the 4-1/2 years old boy died. Hence, taking into consideration the date of accident and the age of the deceased, the petitioner is entitled to just compensation.

12. In the result, the writ petition is ordered as follows:-

(i) The petitioner is entitled to compensation in a sum of Rs.1,75,000/- from the second respondent.

(ii) The compensation shall carry interest at the rate of 7.5% per annum from the date of this writ petition till date of payment

(iii) Second respondent is granted ten weeks time from the date of receipt of a copy of this order to pay the compensation directly to the petitioner with interest, failing which the petitioner is at liberty to recover the same in accordance with law.

(iv) There will be no order as to costs.

jrl/ts

To

1. The Secretary,
The State of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai 600 009.

2. The Chairman,
Chennai Metro-Water Supply and
Sewerage Board, Chintadripet,
Chennai 600 002,

3. The Commissioner,
Corporation of Chennai,
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